

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 12-034121 (07)
Complex Litigation Unit

MARGARET J. SMITH as Managing General
Partner of P&S Associates, GENERAL
PARTNERSHIP, a Florida limited partnership,
And S&P ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited partnership;
P&S ASSOCIATES, GENERAL PARTNERSHIP,
A Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHIP,
A Florida limited partnership.
Plaintiffs,

Vs

JANET A. HOOKER CHARITABLE TRUST, a
Charitable trust, DIANE M. DEN BLEYKER, an
Individual, ETTOH LTD., a Florida limited
Partnership, et al.
Defendants.

_____/

DEFENDANTS, ABRAHAM NEWMAN, RITA NEWMAN
AND GERTRUDE GORDON'S MOTION FOR SUMMARY JUDGMENT
AND INCORPORATED MEMORANDUM OF LAW

COME NOW, the Defendants, ABRAHAM NEWMAN, RITA NEWMAN
and GERTRUDE GORDON, by and through the undersigned counsel and file this
their Motion for a final Order of Summary Judgment in favor of Abraham
Newman, Rita Newman and Gertrude Gordon on the Third Amended Complaint
filed before this Court and would state further as follows:

1. The Plaintiffs have filed a 7-count Third Amended Complaint seeking damages under the theories of negligence, breach of contract, statutory duty (Fla. Stat. § 620.8807), unjust enrichment, monies had and received, fraudulent transfers and breach of fiduciary duty.

2. All claims brought pursuant to the Partnership Agreement are barred as Plaintiffs fail to bring a lawsuit within the time required under the applicable Statute of Limitations for each count.

3. Additionally and alternatively, any causes of action brought by the Plaintiffs can only recover those monies that were paid or transferred during the applicable Statute of Limitations period.

4. The Defendants herein joined in contemporaneously filed Motions for Summary Judgment by co-defendants in this matter and adopt the Motions for Summary Judgment filed herein by reference.

5. Plaintiffs allege that the Partnership at issue was formed for the purpose of engaging in the business of investments. Each Partnership is governed by the corresponding Partnership Agreement. The Defendants are alleged to have made investments in the Partnerships and, in return, received monies in excess of the initial investment in the Partnerships as a distribution.

6. Pursuant to the Partnership Agreements attached to the Third Amended Complaint, profits and losses are attributable to partners and to be allocated in equal proportion in accordance with the Partnership Capital Contribution to the aggregate total Capital Contribution of all partners. The Partnership was to be overseen by the Managing General Partner and Partnership distributions were to be made at least annually.

PROCEDURAL HISTORY

7. On August 29, 2012, an Order was entered whereby Plaintiff, MARGARET SMITH, was named as the sole Managing General Partner. The Plaintiffs allege that the former Managing General Partners breached their fiduciary duty of loyalty and care to the partners and the Partnership by making improper distributions.

8. The final distributions were made by the Partnership in 2008 when the Madoff fraud was fully disclosed and publicized. This undisputed fact is confirmed by Exhibit "A" to the Third Amended Complaint.

9. In excess of four (4) years later, litigation was instituted by the Partnership by the General Partner against the individual members of the Partnership seeking recovery of damages.

STATUTE OF LIMITATIONS

10. The Complaint was filed on December 10, 2012 and the applicable Statute of Limitations to the non-written contractual causes of action relate back four (4) years and five (5) years on the written agreements from the date of filing. Accordingly, only payments realized or made after December 10, 2008 and 2007, respectively, would be recoverable under any Statute of Limitations applicable to the claims.

11. There are no allegations in the Complaint of any active malfeasance, breach of contract or wrong-doing by the Defendants consistent with §14.03 of the Partnership Agreements rather the claims allege over-payment or payments not properly made to the Defendants by the Partnership. The breach of contract cause of action accordingly would fail in that no allegation has been made to date against any of the Defendants indicating a wrongful taking or action that would give rise to a claim for breach of contract under the Partnership Agreements. The sole basis of the Plaintiffs' cause of action is the non-return of or non-reimbursement of monies paid by the Partnership that were alleged to be either unearned or which are alleged to constitute an unjust enrichment. The non-statutory causes of action are accordingly based in equity or negligence and carry a four (4) year Statute of Limitations, *Swafford vs: Schweitzer*, 906 So.2d 1194 (Fla. 4th DCA 2005), Fla. Stat. § 95.11.

12. The balance of the allegations in negligence, monies had and received and fraudulent transfers as well as Plaintiffs' claim for breach of fiduciary duty are all governed by a four (4) year Statute of Limitations, Fla. Stat. § 95.11(3), §726.110(1).

PARTNERSHIP KNOWLEDGE OF ALL ISSUES IN 2008

13. Knowledge of the events giving rise to the Plaintiffs' various causes of action were known to the General Partners in 2008. This is documented by meetings occurring in January 30th of 2009 at the Weston-Cypress Creek Hotel. The agenda and affidavit of authenticity have been filed with the Court and are herein incorporated by reference as Exhibit "A" to this Motion. It is clear by the agenda to the meeting that all parties including General Partners were aware of the Madoff investment vehicle failure as early as 2008 and that accordingly any statutory extensions of the Florida Fraudulent Transfers Act Limitations could not extend beyond 2009 under any reading of the Statute.

14. Plaintiffs' efforts to seek recovery under Fla. Stat. §620.8807 is further time barred. The Plaintiffs cannot suspend or delay the institution of an action and thereby claim a tolling of the Statute of Limitations by delaying their own performance. The delaying of the institution of the claim does not reserve the right to the Plaintiffs within the statutory period until such time as they themselves

decide to make the claim. *Greene vs. Bursey*, 733 So.2d 1111 (Fla. 4th DCA 1999), at page 1115.

CAUSE OF ACTION UNDER FLA. STAT. § 620

15. The cause of action brought by the Plaintiffs pursuant to Fla. Stat. § 620 is time barred by virtue of the Plaintiffs having filed a cause of action more than two (2) years subsequent to the distribution which is sought to be remedied. Fla. Stat. § 620.1509(4).

16. The cause of action accrued when the distributions were made and certainly no later than the Partnership was made aware of the potential claim for recovery of any over-payments. That date is fixed by virtue of the January 2009 meeting, Exhibit "A".

17. The Plaintiffs' Complaint fails to state any basis upon which the Limited Partners can or should be held to any recoveries based upon a breach of fiduciary duty. Pursuant to Fla. Stat. § 620.1305 the Limited Partners are not under any fiduciary duty simply by virtue of their status as Limited Partners. The claim is devoid of any factual basis to impose any liability upon the Limited Partners simply by virtue of their having received a distribution historically and beyond the limitations imposed by law for any recoupment.

WHEREFORE, the Defendants, ABRAHAM NEWMAN, RITA NEWMAN and GERTRUDE GORDON, respectfully move this Honorable Court for an Order

granting a final summary judgment on all counts together with such other and further relief as this Honorable Court may deem proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the e-filing portal on all registered parties this 10 day of March, 2014.

JOSEPH P. KLAPHOLZ, P.A.
2500 Hollywood Boulevard, Suite 212
Hollywood, Florida 33020
Phone: (954)-925-3355
Fax: (954)-923-0185

By: _____
JOSEPH P. KLAPHOLZ, Esq.
Florida Bar No.: 450431
Primary email: jklap@klapholzpa.com
Secondary email: dml@klapholzpa.com

EXHIBIT “A”

AFFIDAVIT OF CHAD PUGATCH

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

1. CHAD PUGATCH, being first duly sworn, deposes and states as follows:

1. I have personal knowledge of the matters set forth in this affidavit.

2. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein.

3. Prior to January 2009, my firm, Rice Pugatch Robinson & Schiller, P.A. was retained by the S&P Associates, General Partnership and the P&S Associates, General Partnership (the "Partnerships").

4. On January 16, 2009, a Memorandum titled "Notice of Meeting" with an agenda for a meeting to take place on Friday, January 30, 2009, along with additional documents regarding the Bernard Madoff Ponzi scheme, was provided to the partners in the Partnerships. Attached as **Exhibit "A"** is a true and correct copy of the documents (totaling 23 pages) which have been kept by me in the regular and ordinary course of my business.

5. On January 30, 2009, I, as counsel for the Partnerships, attended the partners meeting (the "Meeting").

6. An audio tape recording (the "Recording") was made in conjunction with the Meeting by a firm we hired to provide a call in link for out of town partners to participate in the Meeting.

7. The Recording was made at the time of the Meeting.

8. I have a copy of this Recording and this Recording is an accurate representation of the matters that were discussed at the Meeting.

9. I have kept this Recording, in the ordinary and regular course of my business on behalf of the Partnerships, who were my clients at the time of the Recording.

10. The Recording has been kept in mp3 format as part of the file my law firm has maintained for the matters I handled for the Partnerships and was burned to a CD under my supervision by my staff.

FURTHER AFFIANT SAYETH NAUGHT.

CHAD PUGATCH

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

SWORN TO (OR AFFIRMED) AND SUBSCRIBED before me on this 21 day of February, 2014 by CHAD PUGATCH, who [] is personally known to me or [] who has produced _____ as identification.

Beth C. Fierberg
Print name: _____

(Seal) Notary Public, State of Florida

My Commission Expires: _____



RICE PUGATCH ROBINSON & SCHILLER, P.A.

101 N.E. THIRD AVENUE, SUITE 1800
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE: (954) 462-8000
TELEPHONE (305) 379-3121
FACSIMILE: (954) 462-4300
FACSIMILE (305) 379-4119

www.rprslaw.com

MEMORANDUM

TO: All Partners of P&S Associates, General Partnership
FROM: Chad Pugatch, Esq.
DATE: January 16, 2009
RE: P&S Associates, General Partnership -- Notice of Meeting

Please be advised that my firm has been retained by P&S Associates, General Partnership (P&S) with regard to the unfortunate circumstances created by the arrest of Bernard Madoff and ultimate receivership and bankruptcy filing for Bernard L. Madoff Investment Securities, LLC.

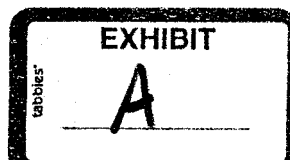
As a result of the above filings and resulting freeze of assets it is imperative that P&S take appropriate actions to protect its interests and therefore all partners' interests. Some of you are aware of our firm's involvement by virtue of initial communication from Michael Sullivan. In fact we have already been receiving requests for information and have done our best to communicate as these requests have arisen. Nevertheless, it is in the best interest of the Partnership and all partners that the Partnership conduct a meeting of all partners where all of these issues and the course of conduct of the Partnership can be determined giving full attention to the input of all partners.

Pursuant to paragraph 8.04 of the Partnership Agreement, a meeting has therefore been scheduled and will take place on **Friday, January 30, 2009** commencing at **2:00 p.m.** eastern time at **Westin Cypress Creek Hotel, 400 Corporate Drive, Fort Lauderdale, Florida 33334.**

At this meeting the managing partners and professionals retained by the Partnership will be prepared to answer questions and deal with all the significant pending issues resulting from the Madoff catastrophe and will attempt to establish based upon the wishes of the partners and appropriate vote the course of conduct of the Partnership in protecting its interests and the interests of the partners.

It is anticipated that certain actions to be undertaken may require a vote. Any partner may attend in person or may attend by participating in a dial in conference call. Appropriate information will be established as to the method for dialing into this call once technical arrangements have been finalized with appropriate audio and conferencing facilities through the hotel. A subsequent notice will provide this information to you. Partners participating in person or by telephone will be entitled to speak and vote.

To the extent any partner is unable to participate either in person or by telephone the provisions of the Partnership Agreement provide in paragraph 8.04 that any partner may execute a signed, written consent to representation by another partner or representative. For your convenience we are



MEMORANDUM

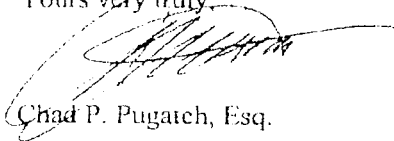
January 16, 2009

Page 2

attaching an appropriate form to be utilized if you decide to be represented by another partner or professional. This form should be **executed; notarized and returned to me prior to the date of the meeting.** The Partnership cannot allow for participation or voting other than by partners or authorized representatives.

Should you have any questions concerning the above please feel free to call upon me and I will attempt as best I can to clarify any of these matters. Please also be patient as to requests for information which have been made in advance of this meeting as the best method of disseminating answers to all questions is to have them answered for the benefit of all partners at the meeting.

Yours very truly



Chad P. Pugatch, Esq.

CPP:be

AGENDA FOR PARTNERS' MEETING – S&P ASSOCIATES, P&S ASSOCIATES, SPJ INVESTMENTS, LTD. INCLUDING MEMBERS OF GUARDIAN ANGEL TRUST, LLC

ATTORNEY/CLIENT PRIVILEGE/WORK PRODUCT

I. INTRODUCTION

This meeting is open to Partners of S&P Associates, P&S Associates, SPJ Investments, LTD as well as members of Guardian Angel Trust, LLC and/or their authorized representatives. It is not open to the public or the press. This meeting is confidential and may include discussion of attorney/client privileged matters. It is not the intention of the Partnerships to waive any such confidentiality or privilege by the unknown presence of unauthorized individuals. PLEASE respect the privacy of this meeting and your Partners.

We have established the following agenda of items to be discussed at the Partners' meeting called pursuant to the notice of January 16, 2009. The purpose of this meeting is first and foremost to provide information to the Partners as to what has transpired since the arrest of Bernard Madoff (Madoff) and subsequent receivership and insolvency proceeding for Bernard L. Madoff Investment Securities, LLC (Madoff Securities). It is also the purpose of the meeting to commence the process of determination by the Partners as to how the Partnerships will react to this crisis and to determine the future course of action of the Partnerships.

You must first come to the realization that to some extent you are all in this together. These are general partnerships and each and every one of you have or will suffer losses due to the unfortunate circumstances which have transpired. You all have potential joint and several liability with regard to the Partnerships as well. The Managing Partners and their families stand alongside you in this regard. They have invested and suffered losses just as you have. They have been working full time since this crisis developed in order to protect the interests of the Partnerships and consequently to protect the interest of each individual Partner. With that in mind please respect the process. We will do our best to get everyone's questions answered and give everyone a thorough opportunity to speak and discuss the matters relevant to the Partnerships.

While we know everyone needs information and we will attempt to answer all relevant and appropriate questions it must be understood that we are, including the professionals retained to represent the Partnerships, still new to the situation and there is an ongoing learning curve as to the facts and legal principles applicable to the facts.

PLEASE BE PATIENT. To the extent we cannot provide you with answers (or satisfactory answers) we will endeavor to do so in future meetings or by future communications. It is unlikely we will conduct any actual voting at this meeting. We have determined that it would be more appropriate, fair and accurate to conduct such voting by subsequent written

ballot in order to allow each Partner to properly consider the issues and to assure proper tabulation of ballots in accordance with each Partner's percentage interest.

Again, after discussion of the Agenda items we will allow adequate time for questions and discussion.

II. INTRODUCTION OF PROFESSIONALS AND ROLE OF PROFESSIONALS

III. BACKGROUND – HOW HAVE WE GOTTEN HERE

A) The Madoff Scandal Evolves

B) The Madoff Securities Insolvency Proceedings

IV. AGENDA ITEMS (Please note we may deviate in order if appropriate)

A) Current Status of Partnerships

B) Filing of Claims

1) Partnerships

2) Individual Rights

C) Deadlines



D) Tax Issues Including Potential for Amending Returns

What the actions of
the P/S affect what of
partner can do?

E) The Insolvency Proceedings

1) Monitoring

2) Deadlines and Hearings

3) Defensive Measures which May Become Necessary

a) Claim Objections

b) Avoidance Actions ("Clawback")

4) Affirmative Claims Against Third Parties

5) Prospective Recovery

F) The \$800,000.00 Repayment to P&S Associates

1) Risk of Avoidance

2) Who has Rights in Funds

G) Future Operations of the Partnerships

1) Management

2) Costs and Professional Fees

3) Wind Down

H) Future Meetings and Communications

I) General Questions and Discussion

Attorney Contact Information

Insolvency Counsel

Rice Pugatch Robinson & Schiller P.A.

Chad P. Pugatch , Esq. (cpugatch@rprslaw.com)

Kenneth B. Robinson, Esq. (krobinson@rprslaw.com)

Travis L. Vaughan, Esq. (tvaughan@rprslaw.com)

101 NE 3rd Ave, Ste 1800

Fort Lauderdale, FL 33301

Telephone: (954) 462-8000

Facsimile: (954) 462-4300

For more information please visit our website at www.rprslaw.com.

Securities Counsel

Sallah & Cox, LLC

James D. Sallah, Esq. (jds@sallahcox.com)

Jeffrey Cox, Esq. (jcox@sallahcox.com)

2101 NW Corporate Blvd Ste 218

Boca Raton, Florida 33431

Telephone: (561)989-9080

Facsimile: (561)989-9020

For more information please visit our website at www.sallahcox.com

Timeline and Dates:

Summary of Events

- I. **On December 11, 2008** the SEC filed a complaint against Bernard L. Madoff Investment Securities, LLC in US District Court for the Southern district of NY, the same day the case was referred to the Bankruptcy Court for the Southern District of NY. [DE # 1]
 - a. Lee S. Richards is Appointed as Receiver: (presently to recover international possessions of Madoff Entities)
- II. **On December 15, 2008** the District Judge found SIPC protections necessary for Madoff Entities.
 - a. The Securities and Investor Protection Corporation is a private corporation which most brokerages must belong to, much like the FDIC, to insure securities investments, and is governed by the Securities Investor Protection Act. The goal of SIPC is to return the actual customer securities and cash to investors when possible, and to advance money to customers when there are insufficient securities or funds held by the debtor to cover responsibilities to customers. However, there are limits to coverage.
 - b. Irving Picard is appointed SPIC Trustee and supersedes Receiver
- III. **On December 23, 2008**, the Bankruptcy Court Approved the Trustee's Notice of procedures and claims forms. [See Exhibits A-E]
- IV. **On January 2, 2009**, Claims Forms/Info Mailed Out.
- V. **On January 12, 2009**, Bankruptcy Court approved Trustee's request for authority to subpoena documents and examine witnesses.
- VI. **On January 21, 2009**, Trustee filed his motion to extend time to assume or reject leases. (hearing set for February 4, 2009).
- VII. **On January 29, 2008** Bankruptcy Court approved stipulation of Trustee with JP Morgan and Bank of New York Mellon for the Transfer of ≈\$534,900,000.00 from accounts held in the Debtor's Name

Important Deadlines/Dates:

January 12, 2009	Deadline for open Broker Claims
February 20, 2009 at 10:00 am	341 Meeting of Creditors will be held
March 4, 2009 (January 2 + 60days)	Deadline for customer claims to be <i>received</i> and retain greatest SIPA protections
July 2, 2009 (January 2, + 6 months)	Claims Bar Date: customer claims and creditor Claims must be <i>received</i> by this date for allowance

**** Deadlines are when the Trustee must *receive* claims.**

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

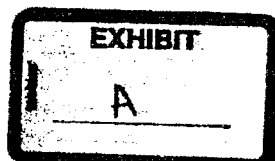
Adversary Proceeding

No. 08-01789-BRL

**NOTICE TO CUSTOMERS AND CREDITORS OF BERNARD L. MADOFF
INVESTMENT SECURITIES LLC AND TO ALL OTHER PARTIES IN INTEREST**

COMMENCEMENT OF LIQUIDATION PROCEEDING

NOTICE IS HEREBY GIVEN that on December 15, 2008, the Honorable Louis A. Stanton of the United States District Court for the Southern District of New York, entered an Order granting the application of the Securities Investor Protection Corporation ("SIPC") for issuance of a Protective Decree adjudicating that the customers of Bernard L. Madoff Investment Securities LLC (the "Debtor"), are in need of the protection afforded by the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"). Irving H. Picard, Esq. ("Trustee") was appointed Trustee for the liquidation of the business of the Debtor, and Baker & Hostetler LLP was appointed as counsel to the Trustee. Customers of the Debtor who wish to avail themselves of the protection afforded to them under SIPA are required to file their claims with the Trustee within sixty (60) days after the date of this Notice. Customers may file their claims up to six months after the date of this Notice; however, the filing of claims after the sixty (60) day period but within the six month period may result in less protection for the customer. Such claims should be filed with the Trustee at Irving



H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201. **Customer claims will be deemed filed only when received by the Trustee.**

Forms for the filing of customers' claims are being mailed to customers of the Debtor as their name and addresses appear on the Debtor's books and records. Customers who do not receive such forms within seven (7) days from the date of this Notice may obtain them by writing to the Trustee at the address shown above.

Claims by broker-dealers for the completion of open contractual commitments must be filed with the Trustee at the above address within thirty (30) calendar days after December 11, 2008, that is January 12, 2009, as provided by 17 C.F.R. 300.303. **Broker-dealer claims will be deemed to be filed only when received by the Trustee.** Claim forms may be obtained by writing to the Trustee at the address shown above.

All other creditors of the Debtor must file formal proofs of claim with the Trustee at the address shown above within six (6) months after the date of this Notice. **All such claims will be deemed filed only when received by the Trustee.**

No claim of any kind will be allowed unless received by the trustee within six (6) months after the date of this Notice.

AUTOMATIC STAY OF ACTIONS AGAINST THE DEBTOR

NOTICE IS HEREBY GIVEN that as a result of the issuance of the Protective Decree, certain acts and proceedings against the Debtor and its property are stayed as provided in 11 U.S.C. § 362 and by order of the United States District Court for the Southern District of New York entered on December 15, 2008 by the Honorable Louis A. Stanton.

MEETING OF CREDITORS

NOTICE IS HEREBY GIVEN that the first meeting of customers and creditors will be held on February 20, 2009, at 10:00 a.m., at the Auditorium at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, at which time and place customers and creditors may attend, examine the Debtor, and transact such other business as may properly come before said meeting.

HEARING ON DISINTERESTEDNESS OF TRUSTEE AND COUNSEL TO THE TRUSTEE

NOTICE IS HEREBY GIVEN that on February 4, 2009, at 10:00 a.m., at Courtroom 601 of the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, has been set as the time and place for the hearing before the Honorable Burton R. Lifland, United States Bankruptcy Judge, of objections, if any, to the retention in office of Irving H. Picard, Esq., as Trustee, and Baker & Hostetler LLP, as counsel to the Trustee, upon the ground that they are not qualified or not disinterested as provided in SIPA § 78eee(b)(6). Objections, if any, must be filed not less than five (5) days prior to such hearing, with a copy to be served on counsel for the Trustee at Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, attn: Douglas E. Spelfogel, Esq., so to be received no fewer than five (5) days before the hearing.

NOTICE IS HEREBY GIVEN that copies of this Notice, the letter to customers, the customer claim form, and instructions as well as the SIPC brochure may be found on SIPC's

website at www.sipc.org under Proceedings/Liquidations and on the Trustee's website, www.madofftrustee.com. From time to time in the future, other updated information and notices concerning this proceeding may also be posted at SIPC's and/or the Trustee's website.

Dated: January 2, 2009
New York, New York

Irving H. Picard, Esq.
Trustee for the Liquidation of the
Business of Bernard L. Madoff Investment
Securities LLC

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

TO ALL CUSTOMERS OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC:

Enclosed are the following documents concerning the liquidation of the business of Bernard L. Madoff Investment Securities LLC (the "Debtor"):

1. A Notice;
2. A Customer Claim Form with Instructions; and
3. A brochure entitled "How SIPC Protects You."

You are urged to read the enclosed documents carefully. They explain the steps you must take to protect any rights and claims you may have in this liquidation proceeding.

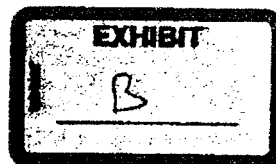
The Customer Claim form should be filled out by you and mailed to Irving H. Picard, Esq., Trustee for the Liquidation of the Business of Bernard L. Madoff Investment Securities LLC at: Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201. A return envelope for the completed Customer Claim form is enclosed. Please make a copy of the completed Customer Claim form for your own records.

Your Customer Claim form will not be deemed to be filed until received by the Trustee. It is strongly recommended your claim be mailed certified mail, return receipt requested. Your return receipt will be the only document you will receive that shows your claim has been received by the Trustee.

If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received. It is also important that you provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of any cash amounts and any securities given to the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

While your claim is being processed, you may be requested to file additional information or documents with the Trustee to support the validity of your claim.

It is your responsibility to report accurately all securities positions and money balances in connection with your account with the Debtor. A false claim or the retention of property to which



you are not entitled may make you liable for damages and criminal penalties. If you cannot precisely calculate the amount of your claim, however, you may file an estimated claim.

One of the purposes of the liquidation is to return securities and cash due to customers as promptly as practicable. In that connection, funds of the Securities Investor Protection Corporation may be utilized to pay valid customer claims relating to securities and cash up to a maximum amount of \$500,000.00 for each customer, including up to \$100,000.00 for claims for cash, as provided in the Securities Investor Protection Act of 1970, as amended ("SIPA"). The enclosed brochure provides information concerning the protection afforded by SIPA.

Customers' telephone inquiries delay the liquidation. The time of personnel who would otherwise be at work to speed the satisfaction of customers' claims is required for such calls.

Your cooperation in promptly returning the completed Customer Claim form with all supporting documentation to the Trustee is in your best interest as it will help speed the administration of the liquidation proceeding.

Dated: January 2, 2009
New York, New York

Irving H. Picard, Esq.
Trustee for the Liquidation of the
Business of Bernard L. Madoff Investment
Securities LLC

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

READ CAREFULLY

INSTRUCTIONS FOR COMPLETING CUSTOMER CLAIM FORM

These instructions are to help you complete the customer claim form enclosed. If Bernard L. Madoff Investment Securities LLC ("Broker") owes you cash or securities and you wish to claim them, the trustee must **receive** your claim on or before the date specified on the claim form. An improperly completed claim form will not be processed but will be returned to you and, consequently, will cause a delay in the satisfaction of your claim.

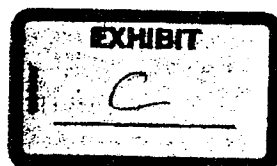
Item 1 is to be completed if on the date shown, the Broker owed you cash or if you owed the Broker cash.

If the Broker owes money to you, please indicate the amount in the space provided [Item 1a]. If you owe the Broker money, please so indicate in the space provided [Item 1b]. If the Broker owes you securities and you wish to receive those securities without deduction, then you must enclose your check for the amount shown in Item 1c payable to "Irving H. Picard, Esq., Trustee for the Broker." **Payments not enclosed with this claim form will not be accepted by the trustee for purposes of determining what securities are to be distributed to you.**

Item 2 deals with securities (including any options) held for you. If the Broker is holding securities for you or has failed to deliver securities to you, please indicate by checking the appropriate box under Item 2 and set forth in detail the information required with respect to the date of the transaction, the name of the security and the number of shares or face value of bonds. With respect to options, set forth number and type of options, the exercise price and expiration date, e.g., 3 options [call] or [put] Xerox at 70 2x October 81. **PLEASE DO NOT CLAIM ANY SECURITIES YOU ALREADY HAVE IN YOUR POSSESSION.**

It would expedite satisfaction of your claim if you enclose copies of:

1. Your last account statement;



2. An explanation of any differences between cash balances and securities on your last account statement and cash balances and securities you claim;
3. Purchase and sale confirmations and canceled checks covering the items referred to on your customer claim form; and
4. Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.
5. Any other documentation which may assist the processing of your claim, such as correspondence, receipts, etc. In particular, if, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

Items 3 through 9 must each be marked and details supplied where appropriate.

A claim form must be filed for each account.

When To File

There are two deadlines for filing customer claims. One is set by the bankruptcy court for customer claims and one is set by the law for all claims.

The bankruptcy court has set March 4, 2009 as the final day for filing customer claims. If your claim is received by the Trustee after March 4, 2009 but on or before July 2, 2009, your claim is subject to delayed processing and to being satisfied on terms less favorable to you.

The law governing this proceeding absolutely bars the allowance of any claim, including a customer claim, not actually received by the trustee on or before July 2, 2009. Neither the Trustee nor SIPC has authority to grant extensions of time for filing of claims, regardless of the reason. If your claim is received even one day late, it will be disallowed.

Please file well in advance so that there will be time to re-file if, for instance, your claim is lost in the mail.

Where To File

The completed and signed claim form, together with supporting documents should be mailed **promptly** in the enclosed envelope to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

***** PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - ***
RETURN RECEIPT REQUESTED**

Your claim is not filed until received by the Trustee. If the Trustee does not receive your claim, although timely mailed, you could lose all your rights against the Broker. Your return receipt will be the only document you will receive that shows your claim has been received by the Trustee.

**THIS INSTRUCTION SHEET IS FOR YOUR FILE - DO NOT RETURN
YOU SHOULD RETAIN A COPY OF THE COMPLETED CLAIM FORM FOR
YOUR RECORDS.**

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

(Please print or type)

Name of Customer: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

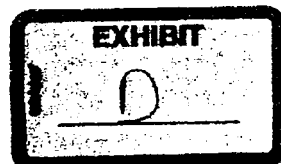
Account No.: _____

Taxpayer I.D. Number (Social Security No.): _____

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of **December 11, 2008**:

- a. The Broker owes me a Credit (Cr.) Balance of \$ _____
- b. I owe the Broker a Debit (Dr.) Balance of \$ _____
- c. If you wish to repay the Debit Balance,
please insert the amount you wish to repay and
attach a check payable to "Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC."
If you wish to make a payment, it **must be enclosed**
with this claim form. \$ _____
- d. If balance is zero, insert "None." _____



2. Claim for securities as of **December 11, 2008**:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| a. The Broker owes me securities | _____ | _____ |
| b. I owe the Broker securities | _____ | _____ |
| c. If yes to either, please list below: | | |

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds	
		The Broker Owes Me (Long)	I Owe the Broker (Short)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	_____
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	_____
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	_____
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	_____
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	_____
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	_____
9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker.	_____	_____

Please list the full name and address of anyone assisting you in the preparation of this claim form: _____

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date _____ Signature _____

Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

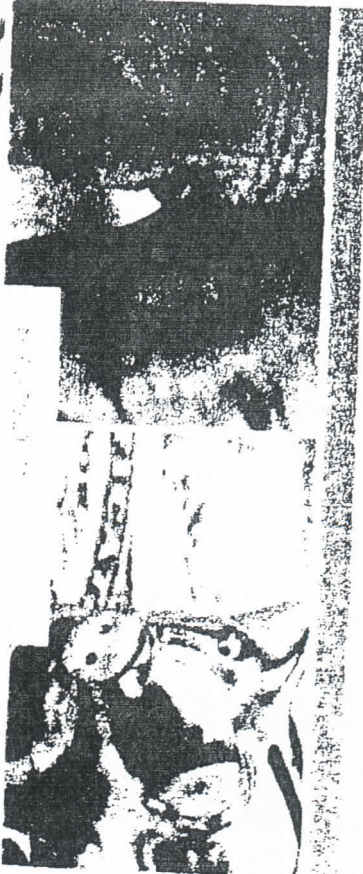
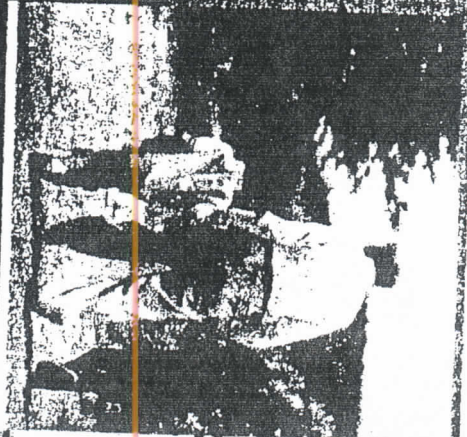
**This customer claim form must be completed and mailed promptly,
together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

SIPC

Securities Investor Protection Corporation
 805 13th Street, N.W., Suite 803
 Washington, D.C. 20005-2215
 Tel: 202.371.8300 | Fax: 202.371.8728
 Email: cas@sipc.org

SIPC



Brokerage firms that experience serious financial difficulties and must be shut down undergo what are called "liquidation" proceedings. The good news is that such a closure seldom happens any more. Thanks to the combined efforts of securities regulators (the U.S. Securities and Exchange Commission) and state securities regulators, and to the industry self-regulatory organizations (the NASD and stock exchange) and broker-dealer firms, even in the United States, even when a brokerage firm encounters financial difficulty it usually has all of the assets owed to its customers, and can efficiently transfer those assets to another brokerage without a liquidation proceeding.

However, a small handful of brokerage firms do encounter more severe financial difficulties, including customer assets that may be missing due to theft. These are the instances where the Securities Investor Protection Corporation (SIPC) steps in. It is part of a public-private partnership, with certain limits set by law. SIPC was created in 1970 by Congress under the Securities Investor Protection Act (SIPPA) to protect the interests of investors, and to help bolster confidence in the integrity of the American securities markets. Nearly all brokerage firms registered with the U.S. Securities and Exchange Commission are required by law to be members of SIPC.

You can find SIPC on the Web at <http://www.sipc.org>.





THE SIPC GUIDE TO BROKERAGE FIRM LIQUIDATION

the brokerage firm about any discrepancy between your records and those of the firm. If you have not already done so and your brokerage firm is facing a liquidation proceeding, make sure to carefully review your account statement in the way that is described here.

2. Make sure the trustee in the liquidation proceeding has your correct address. Have you moved to a different residence recently? Are your transaction documents not arriving in the mail? The trustee will mail a claim form to every customer at the address listed in the brokerage firm's records. If the brokerage firm records relied upon by a trustee aren't up to date, you may not receive a claim form, and that could leave you at a serious disadvantage in the liquidation proceeding. If you don't get a mail address from the trustee in a week or two after the liquidation proceeding is announced, write us up to the SIPC Web site <http://www.sipc.org> and the information about your firm and then e-mail the trustee as indicated on your current contact information. You may want to print out the form from the SIPC Web site (See "Frequently Asked Questions" below).

Put in the top and submit the claim form on a timely basis. No burden is on you to complete the form and then return it to the trustee on time. Make sure the rest of the claim form is filled out and make a copy for your records. Send the claim form to the trustee and any necessary documents (not necessarily within the claim form by e-mailing and e-mailing the trustee reviewed your claim form. If the claim form is not received within 30 days of the trustee's letter, you may want to contact the trustee by e-mail or by phone. If the trustee is still not responding, you may want to contact the trustee by phone. If the trustee is still not responding, you may want to contact the trustee by phone.

1. I didn't get a claim form. What should I do?

Go to SIPC's Web site at <http://www.sipc.org>. Shortly after a liquidation proceeding starts, SIPC will post a copy of the claim form on its Web site. While you cannot file a claim electronically, you can print out the claim form or the Web site and send it in. You also can consult the SIPC Web site to find the address to use to write to the trustee and request a claim form.

I think I was a victim of fraud. My broker convinced me to buy securities that went down sharply. Can SIPC return the amount of my initial investment?

No. SIPC returns the current value of your eligible holdings at a brokerage firm. If your securities have gone down in value, that is just part of the normal risk involved in being an investor. On the other hand, if your securities have gone up in value since you purchased them, SIPC will endeavor to return those securities to you at their current value. You may have a "general creditor claim" for your market losses, but that is not something that falls within the scope of SIPC. Funds from SIPC cannot be used to pay damage claims based on fraud.

How long will it take for me to get control of my account again?

Every liquidation proceeding is different. In some instances, a trustee has been able to transfer accounts in as little as one to three weeks. However, if the records of the defunct brokerage firm are in disarray, or if for any other reason it is not possible to transfer your

account to a financially healthy brokerage firm, the process may take more time. You can't sit down on the Jell-O by filing your claim promptly, correctly and with all required documentation.

After the liquidation proceeding involving my "old" brokerage firm started, I received a notice that my account was transferred to another brokerage firm. Does that mean I don't have to bother with the claim form?

No. You should still complete the claim form anyway and return it to the trustee. There are a number of things we must go through with a transfer of your assets to the new brokerage firm. Your account may be restricted by the new firm, or returned to the trustee for some other reason. If anything does in fact go wrong with the transfer of your account, the claim form will be the only way you will be able to receive your assets. Fill out the claim form and return it, even if you have been told your account has been transferred.

I don't understand how to fill in the claim form. Where can I get help?

You can find a step-by-step guide to filling out your claim form on the SIPC Web site at <http://www.sipc.org>. Keep in mind that your claim form cannot be filed electronically. However, you can use the "SIPC Claim Form" Online Center to fill out your form. If you do so, you must still print out and mail the completed form and all required attachments to the court-appointed trustee. Remember, your claim form is considered to be filed only when it is received in total by the trustee in the mailbox. Make sure to copy the print-out of your claim form (and related documentation) and store it in the copies by certified mail with "return receipt requested." Be sure to observe the deadline for timely submission of your claim.